

United States Senate  
WASHINGTON, DC 20510

December 20, 2019

Francis S. Collins, M.D., Ph.D.  
Director  
National Institutes of Health  
9000 Rockville Pike  
Bethesda, MD 20892

Dear Director Collins:

We are writing today to express our concern regarding the National Institutes of Health (NIH)'s announcement, made public on October 24, 2019, that it will not send 44 chimpanzees (now down to 43 chimpanzees) held at the Alamogordo Primate Facility on Holloman Air Force Base in New Mexico to the national sanctuary system at Chimp Haven in Keithville, LA. In addition to our general questions about the NIH's rationale for retaining these chimpanzees that are no longer needed for biomedical research (i.e. "surplus"), we are concerned that the NIH's decision may be contrary to Congress's intent in passing the Chimpanzee Health Improvement, Maintenance, and Protection Act (CHIMP Act).

Following public outcry over the federal government's continued ownership of several hundred surplus chimpanzees, and in light of the National Research Council's 1997 report to the NIH about long-term care and support, Congress passed the CHIMP Act. The CHIMP Act was based on congressional testimony that found sanctuaries to be "cheaper, healthier, and better . . . for the interest of the chimpanzees," since chimpanzee "medical research facilities are not . . . a suitable environment for . . . long-term holding." As a result, Congress mandated that NIH provide permanent retirement in the national sanctuary system for chimpanzees owned by NIH.

In light of the extensive testimony and evidence in support of a sanctuary system for these chimpanzees, the Act afforded the NIH—an agency that expressed concerns with this Act as it wound its way through Congress<sup>1</sup>—very little discretion over whether "surplus" chimpanzees would be allowed to go to retire to the sanctuary system. Indeed, in establishing this sanctuary system, Congress stripped the NIH of its discretion over these surplus chimpanzees, mandating that "all surplus chimpanzees owned by the Federal government *shall* be accepted into the sanctuary system."<sup>2</sup> In contrast, neither the CHIMP Act nor its implementing regulations provide NIH the discretion *not* to transfer a chimpanzee to sanctuary once the determination that it is a "surplus chimpanzee" has been made.<sup>3</sup>

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<sup>1</sup> See Testimony of John Strandberg, Dir. Of Comparative Medicine, National Center for Research Resources, NIH, H.R. Rep. No. 106-109 (2000).

<sup>2</sup> 42 USC § 283m(c) (emphasis added). This mandate contrasts with the CHIMP Act's treatment of chimpanzees that are not "surplus chimpanzees," whose acceptance into the sanctuary system is subject to agency discretion. *Id.* § 283m(d)(2)(K).

<sup>3</sup> *Id.*

Congress was well aware of issues related to the age and health of chimpanzees who are received into the sanctuary system. The Senate considered and rejected the NIH's current position that age or infirmity could be sufficient cause to deny these chimpanzees a transfer, finding that "advanced age or infection" would actually be a *compelling* reason to admit these chimpanzees.<sup>4</sup> Further, the House was well aware that chimpanzees who were transferred to sanctuaries may not be in pristine health, observing that these sanctuaries would have "some kind of facilities in there to deal with the health needs."<sup>5</sup> That the NIH could now contradict the very reasons Congress found sanctuaries so compelling—that they are "cheaper, healthier, and better" alternatives for aging chimpanzees—is deeply concerning.<sup>6</sup>

The chimpanzees at the Alamogordo Primate Facility are undoubtedly surplus, having lived at the facility for well over a decade without being subjected to any further research. Since at least 2015 NIH has acknowledged that these chimpanzees are no longer necessary for research, triggering the NIH's obligation to retire them.<sup>7</sup> With 43 chimpanzees that are deemed surplus, it appears the NIH now has a legal duty under the CHIMP Act to fulfill its commitment to relocate these chimpanzees to the national sanctuary system. There, these chimpanzees may live out the remainder of their lives under the supervision of caretakers with expertise in maximizing their psychological and physical wellbeing—precisely as Congress envisioned.

The advanced age and suffering from the inevitable maladies associated with the passage of time that the NIH cites as reason not to transfer is actually why the chimpanzees *should* be transferred from Alamogordo Primate Facility to the national chimpanzee sanctuary. And this is true whether viewed from the requirements of the CHIMP Act or the Animal Welfare Act (AWA). The CHIMP Act did require the Secretary of Health and Human Services to establish standards for the care (and, ultimately, transport) of these chimpanzees in accordance with the AWA.<sup>8</sup> Yet the AWA does not require absolute certainty that the transport of primates poses no risk. To the

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<sup>4</sup> Sen. Rep. No. 106-494 (2000) ("Chimpanzees will only enter the sanctuary system when their owners determine the chimpanzee to no longer be appropriate for research (for example, due to advanced age or infections)").

<sup>5</sup> H.R. Rep. No. 106-109, 41.

<sup>6</sup> The CHIMP Act's legislative history confirms that Congress understood that retired chimpanzees would need to be transferred despite serious medical conditions, recognizing that the chimpanzees would receive the best and most cost-effective veterinary care in the sanctuary system. *See, e.g.*, 146 Cong. Rec. H10550-02, H10553 (Oct. 24, 2000) (Statement of Rep. Hall) ("Although many of these surplus chimpanzees have hepatitis and HIV infections and are a danger to uninfected animals as well as their caretakers, [the CHIMP Act] provides, I think, the highest level of veterinary expertise for these retired animals. It establishes sanctuaries and does a lot of other things. But basically, it provides chimpanzees with housing and a protected environment that is sensitive to their social needs along with the long-term health care and all needed medications. It is the right thing to do."); *id.*, H10554 (Statement of Rep. Brown) ("These sanctuaries would be staffed by trained professionals and overseen by a board of professionals with a thorough understanding of the medical needs of the chimps and the safety requirements of their caretakers. Not only will this provide a much higher quality of life for these animals, it will also serve taxpayers well, costing substantially less than the current laboratory facilities."); 2000 WL 718672 (May 18, 2000) (testimony of Dr. Alfred Prince before the House Commerce Subcommittee on Health and Environment) ("[C]himpanzees identified as surplus should also be maintained in a sanctuary setting for the same reasons highlighted in the legislation before this committee. Sanctuaries are cheaper and healthier and better.").

<sup>7</sup> The CHIMP Act defines "surplus chimpanzees" as "chimpanzees that have been used, or were bred or purchased for use, in research conducted or supported by the [NIH], [FDA], or other agencies of the Federal Government, and with respect to which it has been determined by the Secretary that the chimpanzees are not needed for such research." 42 USC § 283m(a).

<sup>8</sup> 42 U.S.C. § 283m(d)(2)(D).

contrary, the regulations make clear that a primate that is “obviously ill, injured, or in physical distress,” must not be transported, “*except to receive veterinary care for the condition.*”<sup>9</sup> Put differently, the AWA regulations, like the CHIMP Act itself, provide that old and infirm primates may be transferred for the purpose of obtaining veterinary care.<sup>10</sup>

That the risk of death comes from anesthesia during transport does not by itself justify NIH’s effort to retain these chimpanzees, with regulations and a statute that are silent on that particular circumstance. This silence is likely due to the fact that the Act is almost twenty years old and Congress may not have foreseen the NIH’s long overdue delay in transferring these chimpanzees. Whatever the reason, Congress was not silent on the most important fact: all surplus chimpanzees owned by the Federal government *shall* be accepted into the sanctuary system, and advanced age and illness are the exact reasons for this transfer, not a basis to subvert the goals of a sanctuary system.

Aside from the broad, overarching concerns about the NIH’s rationale, we are also concerned and have questions about the staffing and space available to the chimpanzees at the Alamogordo Primate Facility. Please provide a detailed answer as to the following questions:

- How is this facility able to meet the complex physical and psychological needs of the 43 chimpanzees remaining in its care?
- Please include the number of remaining staff at the Alamogordo Primate Facility and their job titles.
- Do the chimpanzees have daily access to material to build nests?
- Why are all of the chimpanzees in Alamogordo held in groups smaller than what was determined to be appropriate under a previous NIH Working Group?
- Please also describe the NIH’s obligation and plan to provide the best possible quality of life for these surviving chimpanzees.
- Please list and describe any and all instances in which a chimpanzee has died or has been injured during transport.

We appreciate continuing to work with you on this matter and appreciate your responsiveness but want to make abundantly clear our displeasure with the NIH’s decision to not send these chimpanzees to sanctuary. We disagree on the NIH’s interpretation of the underlying laws and regulations and state unambiguously that these chimpanzees need to be transferred to Chimp Haven before the end of the year. It is unacceptable for the NIH to violate the CHIMP Act and allow all Alamogordo chimpanzees to convalesce in the research facility for the remainder of their lives.

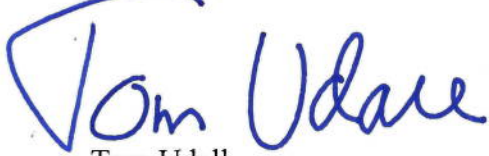
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<sup>9</sup> 9 C.F.R. § 3.90(c) (emphasis added).

<sup>10</sup> 9 C.F.R. § 3.90(c) (AWA regulation allowing transport of chimpanzees that are “obviously ill, injured, or in physical distress” when such transport is for the purpose of “receiv[ing] veterinary care for the condition.”).

Thank you for attention to this urgent matter, we look forward to your reply.

Sincerely,

A handwritten signature in blue ink that reads "Tom Udall". The signature is stylized, with the first name "Tom" written in a large, looped script.

Tom Udall  
United States Senator

A handwritten signature in blue ink that reads "Bill Cassidy, M.D.". The signature is written in a clear, cursive script.

Bill Cassidy  
United States Senator

A handwritten signature in blue ink that reads "Martin Heinrich". The signature is written in a cursive script, with the first name "Martin" being more prominent.

Martin Heinrich  
United States Senator